IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1566 OF 2001

Ramesh Vishwanath Choudhary ...Petitioner

V/s.

Sou. Sanjeevani Ambadas Nilwani (Nirale) and another ...Respondents

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Mr. S.G. Kudle, Adv. for the petitioner

Mr. I.S. Thakur, A.P.P. for the State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATE : 19TH AUGUST, 2004

P.C..

1. Heard the learned advocate for the petitioner and the learned A.P.P. for the State.

2. A complaint had been filed against the petitioner and his son by the respondent No.1 Sou. Sanjeevani. The said complaint was U/secs. 504, 506, 509 r.w. 34 of I.P.C. and was numbered as STC 707/96. In the said case the petitioner came to be acquitted, hence, the petitioner filed complaint U/sec. 500 of I.P.C. against the respondent No.1 i.e. original complainant in STC 707/96. In the said case, the evidence of six witnesses was recorded and then the learned Magistrate came to the conclusion that the respondent No.1 Sou. Sanjeevani has not given

specific abusive words and alleged to have been heard by the petitioner and his son. Therefore, in absence of any specific words relating to the abuses and threats, the petitioner came to be acquitted. On the basis of acquittal order passed on 21.5.1999 in STC 707/96, the complaint in the present case has been filed against the respondent No.1 Sanjeevani by the petitioner.

3. The learned Magistrate has observed that after going through the complaint, verification and the judgment passed in STC 707/96, he came to the conclusion that the complainant (petitioner) failed to make out prima facie ground to proceed against the accused (respondent) U/sec. 499 of I.P.C. and he dismissed the complaint U/sec. 203 of Cr.P.C.

4. The said order has been challenged by filing revision application No.184/2000. The said revision came to be dismissed by the learned Additional Sessions Judge by order dated 19.8.2001.

5. The learned advocate for the petitioner has submitted that the necessary procedure U/sec. 203 of Cr.P.C. has not been complied with. He has submitted that U/sec. 203 of Cr.P.C. it is necessary that the statement of the complainant and his witnesses be recorded before dismissing the complaint in question and this procedure was not

followed by the Magistrate. However, it is to be noted that in fact the Trial Court had recorded the statement of the complainant before directing the police to submit report U/sec. 202 of Cr.P.C. Therefore, in the present case, the Trial Court used both the modes, firstly he called report on 29.11.99 and thereafter also recorded statement of complainant on 30.11.99. Therefore, simultaneously both the modes were applied by the Trial Court and on the basis of statement of complainant, report of the police, the Trial Court gave detailed reasonings for dismissing the complaint U/sec. 203 of Cr.P.C.

6. It is seen that the complainant (respondent No.1) in STC 707/96 had filed a complaint U/sec. 504, 506, 509 r.w. 34 of I.P.C. against the petitioner and his son. The complainant Sou. Sanjeevani had narrated the alleged incident to the police and on its basis, the investigation was carried out in the case. The officer come to the conclusion that the petitioner and his son had committed an offence punishable U/sec. 504, 506, 509 r.w. 34 of I.P.C. therefore, the petitioner and his son came to the prosecuted. The truthfulness of the allegations of the complainant (respondent No.1) were verified by the investigating agency which came to the conclusion that the alleged offences were indeed committed.

Thus, it is seen that the allegations levelled against the petitioner and his son were made out in the investigation. Thus, it is clear that there was no intention on the part of the complainant (respondent No.1) to defame the present petitioner or his son.

7. Thereafter, in the said case the charge came to be framed against the petitioner and his son. The complainant Sou. Sanjeevani and eye witnesses came to be examined. They deposed that the petitioner and his son had abused and threatened the complainant Sou. Sanjeevani. However, as no specific words relating to the abuses were given by the witnesses, the petitioner came to be acquitted by giving benefit of doubt. However, it is pertinent to note that the learned Magistrate believed the evidence of the complainant Sou. Sanjeevani and the witnesses in STC 707/96 and convicted the son of the petitioner U/sec. 509 of I.P.C., Therefore, by no stretch of imagination, it can be said that the allegations made by the complainant (respondent No.1) in STC 707/96 were false and malafide, due to which the petitioner was defamed in the society. Though, the petitioner was acquitted in the said case, it does not mean that the incident narrated by the respondent No.1 was totally false and concocted and the petitioner was falsely implicated therein. In the judgment also,

wherein the petitioner came to be acquitted there are no remarks or observations made by the learned Magistrate regarding falsity of the case or that the allegations levelled against the petitioner by the complainant therein are false. It is reiterated that the petitioner was acquitted in the said case by giving benefit of doubt.

8. Looking to all the facts in the above matter, I see no reason to interfere with the order of the learned Magistrate or the learned Sessions Judge. No case is made out for interference. Writ petition is dismissed.